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3 **RESOLUTION NO. 2014-53**
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5 **A RESOLUTION OF THE VILLAGE COMMISSION**
6 **OF THE VILLAGE OF BISCAYNE PARK, FLORIDA;**
7 **AUTHORIZING THE MAYOR TO EXECUTE THE**
8 **AGREEMENT BETWEEN MODERN MARTIAL ARTS**
9 **& FITNESS AND THE VILLAGE OF BISCAYNE PARK**
10 **FOR THE PROVISION OF MARTIAL ARTS**
11 **INSTRUCTION AT THE ED BURKE RECREATION**
12 **CENTER; PROVIDING FOR AN EFFECTIVE DATE.**
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14
15 WHEREAS, the Village's Parks & Recreation Department strives to provide quality
16 fitness and sports programs for the benefit of the residents; and,
17

18 WHEREAS, Joe Chao, Head Instructor at Modern Martial Arts & Fitness, is a Biscayne
19 Park resident, and has over 14 years' experience in martial arts and is a certified instructor;
20 and,
21

22 WHEREAS, Modern Martial Arts & Fitness' program provides students the highest
23 quality martial arts instruction in a safe and positive learning environment while having fun;
24 and,
25

26 WHEREAS, the Village Commission of the Village of Biscayne Park finds it to be in
27 the best interests of the residents of the Village to enter into an agreement with Modern Martial
28 Arts & Fitness to provide martial arts instruction at the Ed Burke Recreation Center.
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31 **NOW THEREFORE BE IT RESOLVED BY THE VILLAGE COMMISSION OF**
32 **THE VILLAGE OF BISCAYNE PARK, FLORIDA:**
33

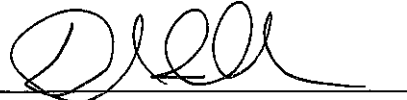
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35 **Section 1.** The foregoing "Whereas" clauses are hereby ratified and confirmed as
36 being true and correct and hereby made a specific part of this Resolution upon adoption hereof.
37

38 **Section 2.** The Village Commission of the Village of Biscayne Park hereby
39 authorizes the Mayor to execute the Agreement between Modern Martial Arts & Fitness, Inc.,
40 and the Village of Biscayne Park for the provision of exercise classes. The Agreement, in
41 substantial form, is attached and incorporated by reference into this resolution as exhibit 1.
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43 **Section 3.** This Resolution shall become effective upon adoption.
44

45
46 PASSED AND ADOPTED this 9th day of September, 2014.
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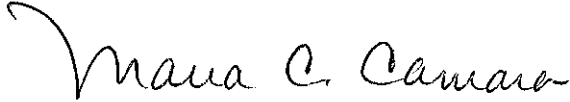
The foregoing resolution upon being
put to a vote, the vote was as follows:



David Coviello, Mayor

Mayor Coviello: Yes
Vice Mayor Ross: Yes
Commissioner Anderson: Yes
Commissioner Jonas: Yes
Commissioner Watts: Yes

Attest:



Maria C. Camara, Village Clerk

Approved as to form:



John J. Hearn, Village Attorney

**AGREEMENT BETWEEN THE VILLAGE OF BISCAYNE PARK
AND MODERN MARTIAL ARTS AND FITNESS, INC.
FOR THE PROVISION OF
MARTIAL ARTS INSTRUCTION**

THIS AGREEMENT is entered into this 9th day of September, 2014 between the Village of Biscayne Park, a Florida municipal corporation, (VILLAGE), and Modern Martial Arts & Fitness, Inc. (INSTRUCTOR).

WHEREAS, the VILLAGE desires to retain the professional services of INSTRUCTOR to provide martial arts instruction; and

WHEREAS, the INSTRUCTOR desires to provide martial arts instruction at the Ed Burke Recreation Center.

**ARTICLE I
SCOPE OF SERVICES**

The INSTRUCTOR agrees to:

- 1.1 Provide martial arts instruction at the Ed Burke Recreation Center.
- 1.2 Conduct classes in a professional, careful and responsible manner with due regard for the safety of the participants and others, during normal operating hours.
- 1.3 Be solely responsible, at INSTRUCTOR's sole expense, for providing and paying for all instructors, counselors, and other personnel costs associated with the program.
- 1.4 Be solely responsible for securing the services of and compensating assistants or other personnel, as may be required, to perform the program.
- 1.5 Provide to VILLAGE at the close of registration, a list of all participants, along with a signed VILLAGE approved Release form.
- 1.6 Permit only registered program participants to attend program sessions.
- 1.7 Vacate the program facility promptly at the conclusion of the program session in equal or better condition than it was found.
- 1.8 Accept neither fees nor any other payment other than as specifically set forth in this Agreement.
- 1.9 Immediately notify the Village Manager, or her designee, in the event it becomes necessary to cancel a program session.

- 1.10 Immediately notify the Village Manager, or her designee, of any injury sustained by a program participant.
- 1.11 Comply with any other rules adopted by the Village Manager, or her designee, for use of VILLAGE's property, including the facilities used by INSTRUCTOR pursuant to this Agreement.
- 1.12 Actively supervise the operation of each program.
- 1.13 Be responsible for enforcing compliance with the approved rules for all programs. The VILLAGE reserves the right to enact other rules, if necessary, at its sole discretion.
- 1.14 If any participants will be under the age of eighteen (18), require that all counselors, employees and/or instructors undergo Level 2 background screening prior to supervising children, and furnish all reports to the VILLAGE.
- 1.15 The VILLAGE reserves the right to suspend, bar, or expel any employee, counselor, or instructor for any reason, at its sole discretion, without recourse from the subject person or the INSTRUCTOR.

The VILLAGE agrees to:

- 1.16 Allow INSTRUCTOR the use of the Ed Burke Recreation Center for INSTRUCTOR's martial arts instruction classes.
- 1.17 Allow INSTRUCTOR advertising in VILLAGE's newsletters and publications, at no cost to INSTRUCTOR.
- 1.18 Process program participants' fees in accordance with VILLAGE revenue processing procedures.
- 1.19 Grant INSTRUCTOR license, revocable at will, to use the Ed Burke Recreation Center, consistent with the obligations under this Agreement.

ARTICLE 2

FEES AND COMPENSATION

- 2.1 The INSTRUCTOR shall be compensated from fees collected from participants. The parties agree that VILLAGE shall retain thirty percent (30%) of all registration fees and the INSTRUCTOR shall retain seventy percent (70%) of all registration fees.
- 2.2 INSTRUCTOR shall not charge any participant for any other services not contained in the Agreement.

- 2.3 All items sold by INSTRUCTOR shall be approved by the VILLAGE Manager prior to offering any item for sale.
- 2.4 INSTRUCTOR shall keep all books, rosters and attendance in accordance with standard accounting procedures, and shall make them available to the VILLAGE for inspection and audit at all times.

ARTICLE 3 **TERMINATION OF AGREEMENT**

- 3.1 This Agreement may be terminated upon thirty (30) days written notice from the VILLAGE at VILLAGE's sole discretion. INSTRUCTOR may terminate this Agreement, at its sole discretion, by giving thirty (30) days written notice to the VILLAGE.
- 3.2 The VILLAGE may unilaterally immediately terminate this Agreement and the license granted by this Agreement if VILLAGE determines, in its sole discretion, that INSTRUCTOR is not conducting his operations in complete accord with this Agreement, or in the best interests of the VILLAGE.

ARTICLE 4 **INDEPENDENT CONTRACTOR**

- 4.1 The parties agree and affirm that INSTRUCTOR is an independent contractor and not an agent, partner or employee of the VILLAGE, nor shall this Agreement be construed as a partnership nor joint venture between VILLAGE and INSTRUCTOR, the relationship being solely on of licensor and licensee.
- 4.2 INSTRUCTOR has control over the means and methods by which it performs the services. INSTRUCTOR, its employees and agents shall be deemed independent contractors and not agents or employees of the VILLAGE, and shall not attain any rights or benefits generally afforded VILLAGE employees; further, INSTRUCTOR, its employees and agents shall not be deemed entitled to the VILLAGE's worker's compensation, insurance benefits or similar laws.

ARTICLE 5 **INDEMNIFICATION CLAUSE**

INSTRUCTOR agrees to defend, indemnify and hold harmless the VILLAGE from and against any and all claims, suits, damages, liabilities or causes of action arising during the term of this Agreement, arising out of, related to, or in any way connected with the performance or non-performance of any provision of this Agreement required of the INSTRUCTOR, including personal injury, loss of life or damage to property and from and against any orders, judgment or decrees which

may be entered, and from and against all costs, attorney's fees, and expenses incurred in and about the defense of any such claim and the investigation thereof. However, nothing shall be deemed to indemnify VILLAGE for any liability or claim arising solely out of the negligent performance or failure of performance of VILLAGE.

ARTICLE 6 **INSURANCE**

- 6.1 INSTRUCTOR shall provide, pay for, and maintain in force at all times during the period of this Agreement, a Comprehensive General Liability Insurance Policy with minimum bodily injury coverage of \$500,000.00 (five hundred thousand dollars) and \$200,000.00 (two hundred thousand dollars) property damage liability; workers compensation insurance as required by State Statute. The INSTRUCTOR'S insurance coverage shall be considered the primary carrier.
- 6.2 To the extent applicable, the worker's compensation insurance shall be at the statutory amount to apply for all employees in compliance with the "Workers' Compensation Law" of the State of Florida and all applicable federal laws. In addition, the policy(ies) must include: Employers' Liability at the statutory coverage amount.
- 6.3 The VILLAGE shall be named, as an additional insured on all insurance policies the INSTRUCTOR is required to provide.

ARTICLE 7 **MISCELLANEOUS**

- 7.1 INSTRUCTOR shall, without additional expenses to VILLAGE be responsible for obtaining any necessary licenses and for complying with any applicable federal, state, county, and municipal laws, ordinances, and regulations in connection with the performance of the services specified herein. INSTRUCTOR shall take proper safety and health precautions, including the employment of needed assistance, to protect participants, the VILLAGE, the public and property of others. INSTRUCTOR shall be responsible for all services performed until completion of this Agreement.
- 7.2 The INSTRUCTOR shall not promote any privately owned business in a VILLAGE park facility or solicit any participant in a VILLAGE park for any privately owned business other than the martial arts instruction program. It is further understood that such action(s) may result in immediate termination of the Agreement and the forfeiture of all compensation due to the INSTRUCTOR.
- 7.3 INSTRUCTOR shall meet with the Village Manager or her designee as requested.

- 7.4 No modification, amendment, or alteration of the terms and conditions contained shall be effective unless contained in a written document executed with the same formality and equal dignity herewith.
- 7.5 This Agreement is non-transferable or assignable, and INSTRUCTOR agrees not to transfer or assign the performance of services called for in the Agreement.
- 7.6 This Agreement sets forth the full and complete understanding of the parties as of the effective date, and supersedes any and all negotiations, agreements, and representations made or dated prior to this Agreement.

IN WITNESS THEREOF, the parties hereto have made and executed this Agreement on the date above:

VILLAGE OF BISCAYNE PARK,
FLORIDA, a municipal corporation,
organized and existing under the laws of
the State of Florida

ATTEST:

Maria C. Camara

Maria C. Camara, Village Clerk

By: David Coviello
David Coviello, Mayor

Approved as to form:

By: John J. Hearn
John J. Hearn, Village Attorney

Joe Chao, Head Instructor, for
Modern Martial Arts & Fitness

Joe Chao

STATE OF FLORIDA)
COUNTY OF DADE)

BEFORE ME, an officer duly authorized by law to administer oaths and take acknowledgments, personally appeared Joe Chao and acknowledged he executed the foregoing Agreement as the proper official of INSTRUCTOR, for the use and purposes mentioned in it and that the instrument is the act and deed of INSTRUCTOR.

IN WITNESS OF THE FOREGOING, I have set my hand and official seal at in the State and County aforesaid on this 17th day of September, 2014.

My Commission Expires:

Maria C. Camara
NOTARY PUBLIC

